

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ERIC SMILEY,

Petitioner,

v.

Case No. 03-C-0656

GARY McCAUGHTRY, Warden

Respondent.

ORDER

In July 2007, I granted Eric Smiley's petition for habeas corpus and ordered the State of Wisconsin to retry or release him. As is usual in such situations, respondent appealed. Subsequently, I stayed the retry or release order pending the parties' attempts to resolve the case. When their negotiations broke down, respondent asked me to extend the stay until the Seventh Circuit decides the appeal, and petitioner requested that I reinstate the retry or release order or alternatively set bail. In determining whether to extend a stay, I consider (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured without a stay; (3) whether issuing the stay will substantially injure other interested parties; and (4) what is in the public interest. Hilton v. Braunskill, 481 U.S. 770, 776 (1987).

Respondent has not made a strong showing that he is likely to succeed on the merits. However, after considering the second, third and fourth factors, I believe that the best course of action is to extend the stay. Accordingly, I will extend the stay until the Seventh Circuit resolves the appeal.

NOW, THEREFORE, IT IS HEREBY ORDERED that respondent's request to stay execution of the July 2007 judgment and order pending resolution of the appeal by the Seventh Circuit is **GRANTED** pursuant to Fed. R. App. P. 8(a) and Fed. R. Civ. P. 62(c).

Dated at Milwaukee, Wisconsin, this 4 day of March, 2008.

/s _____
LYNN ADELMAN
District Judge